CMPMO No. 193 of 2007.

16.11.2007 Present: Mr. Naveen Bhardwaj, Advocate, for the petitioners.

Mr. Ajay Mohan Goel, Advocate, for the respondent.

After hearing learned Counsel for the parties and upon perusal of the order dated 31st August, 2006 passed by the learned Civil Judge (Senior Division), Sundernagar as well as the order dated 4th May, 2007 passed by learned District Judge, Mandi, in Civil Miscellaneous Appeal No.26 of 2006, I find that even though a dispute does exit between the parties about the true ownership of the property in question, there is no dispute as far as the possession of the property with the petitioners is concerned. Admittedly, the petitioners are in possession of the property in question. Petitioner No.1 and the respondent are real brothers. Whereas the respondent claims the ownership on the basis of entries in the Jamabandi, the claim of petitioner No.1 for ownership of the property in question is based upon some family settlement between the parties. The fact remains that the petitioners are in possession of the property.

Admittedly, before the status quo order was passed substantial construction had been raised including the laying of the slab over the second storey. Continuing with the status quo order will not benefit any party.

Based on the aforesaid reasoning, this petition is allowed. The impugned judgment is set aside and the temporary injunction is hereby vacated but with the following conditions:-

Even though, because of the vacation of the temporary injunction the petitioners are permitted to complete the remaining construction and use and occupy the premises thus constructed, they shall do so only subject to their filing a joint undertaking in the trial Court within four weeks from today to the effect that if ultimately the suit is decided

against them, they shall hand over the vacant possession of the newly constructed second storey to the respondent-plaintiff without any demur and without claiming any compensation towards the cost of the construction. The petition is allowed. No order as to costs.

CMP No. 679 of 2007.

In view of the disposal of the main petition, this application is also disposed of.

November 16, 2007. (V.K. Gupta), C.J.
(rc)